

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 148 OF 2006

Surekha Lalaso Shinde & Ors. ..Applicants.

versus

Tarabai B. Shinde & Anr. .. Respondent

Mr.S.S.Patwardhan for the applicants.

Mr.T.S.Ingale for respondent no.1

CORAM : D.G. Karnik J.

Date: 18th August 2006

P.C:-

1. Heard learned counsel for the parities. By this revision application the applicants challenge the order dated 28th September, 2005 passed by the Civil Judge, Senior Division, Sangli rejecting their application for dismissal of the respondent's applications for succession certificate as not maintainable.

2. Respondent is the mother of Lalaso Shinde who died intestate leaving behind him the respondent as one of his heirs. The respondent made an application for succession certificate, to the extent of her 1/4th share in the amount of Rs.14,00,692/- lying in the Dena Bank. The applicants who are the widow and children of the deceased opposed the said application. They also prayed for framing of a preliminary issue about maintainability of the application. The learned Judge framed the preliminary issue but held that the application filed by the respondent was maintainable. That order is impugned in this revision application.

3. Mr.Patwardhan, learned counsel for the petitioner submitted that the money in the Dena Bank stands in the names of the revision applicants and not in the name of deceased and therefore the application for succession certificate is not maintainable. The money, admittedly belongs to the deceased but merely stands in the name of the revision applicants. In the circumstances the objection that no succession certificate can be granted has no merit because the

money belongs to the deceased and not to the revision applicants.

4. Mr. Patwardhan, the learned counsel for the petitioner further submitted that the succession certificate cannot be granted under section 317 of the Indian Succession Act. I fail to see how section 317 is applicable to the present case. Under section 317 issuance of a succession certificate is barred if the deceased has made a Will which will required to be probated or in respect of which letters of administration can be obtained under section 212 and 213 of the Indian Succession Act. Since the deceased has died without making a Will, section 317 is not attracted.

5. For these reasons, there is no merits in the revision application. The revision application is dismissed summarily.

(D.G. KARNIK, J.)